

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

2005 DEC - 14 P D 10
J. LaVictoire
CLERK

FREDERICK BROWN,

Plaintiff,

vs.

CIVIL ACTION NO.: CV501-044

GEORGE SMITH; JIM WETHERINGTON;
STEVE ROBERTS; RANDALL HOLDEN;
JACK JONES; JAMES L. THRIFT;
HARRY RONEY and TONY HOWERTON,

Defendants.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, an inmate currently incarcerated at Dooly State Prison in Unadilla, Georgia, filed a 42 U.S.C. § 1983 action, alleging that Defendants were deliberately indifferent to his serious medical needs while he was incarcerated at Ware State Prison in Waycross, Georgia. Defendants filed a Motion for Summary Judgment on May 27, 2003. (Doc. No. 54.) In their previously filed Motion, Defendants asserted that they were entitled to summary judgment based, in relevant part, on the doctrine of qualified immunity. The undersigned issued a Report on December 1, 2003, wherein he recommended that Defendants were not entitled to summary judgment based on qualified immunity. (Doc. No. 68.) In so concluding, the undersigned observed that Plaintiff created a genuine issue of material fact as to whether Defendants responded reasonably to Plaintiff's complaints about being exposed to environmental tobacco smoke ("ETS"). The undersigned specifically noted that Defendants apparently refused to follow several medical directives that Plaintiff be housed in a smoke-free environment indefinitely. (Doc. No. 68, pp. 7-8.)

Defendants filed Objections to the undersigned's Report and Recommendation. By Order dated February 2, 2004, the Honorable William T. Moore, Jr., adopted the undersigned's Report and Recommendation as the opinion of the Court, thus denying summary judgment to Defendants based on qualified immunity. (Doc. No. 78.) On March 8, 2005, Defendants filed a Motion for Reconsideration of the Court's Order based on "new authority"—Kelley v. Hicks, 400 F.3d 1282 (11th Cir. 2005). (Doc. No. 85.) Judge Moore denied Defendants' Motion by Order dated April 25, 2005, finding that Defendants failed to present any evidence which would warrant reconsideration of the Court's prior Order. (Doc. No. 92.) Undeterred, Defendants filed a Second Motion for Summary Judgment on July 18, 2005, and Plaintiff has filed a Response.

In their current Motion, Defendants again contend that they are entitled to summary judgment based on qualified immunity. The undersigned reminds counsel for Defendants that this Court has ruled on this matter previously, both in Defendants' original Motion for Summary Judgment, as well as in their Motion for Reconsideration. The Court need not re-visit the redundant claims Defendants assert in their instant motion. The Orders dated February 2, 2004, and April 25, 2005, should remain the Orders of the Court.

Based on the foregoing, it is my **RECOMMENDATION** that Defendants' Second Motion for Summary Judgment (Doc. No. 97) be **DENIED**.

So **REPORTED** and **RECOMMENDED**, this 7th day of December, 2005.



JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE